RECORD AND BRIEFS

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No. 16-460

IN THE
Supreme Court of the United States

STEPHANIE C. ARTIS
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

On Writ of Certiorari to the
District of Columbia Court of Appeals

BRIEF OF PETITIONER

DAVID A. STRAUSS
SARAH M. KONSKY
JENNER & BLOCK
SUPREME COURT AND
APPELLATE CLINIC AT
THE UNIVERSITY OF
CHICAGO LAW SCHOOL
1111 E. 60th Street
Chicago, IL 60637

MATTHEW S. HELLMAN
ADAM G. UNIKOWSKY
Counsel of Record
TASSITY S. JOHNSON*
JENNER & BLOCK LLP
1099 New York Ave., NW
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

DONALD M. TEMPLE
TEMPLE LAW OFFICES
1310 L Street, NW
Suite 750
Washington, DC 20005

**Not admitted in D.C. Only admitted in Connecticut.*

QUESTION PRESENTED

Section 1367 of Title 28 authorizes federal district courts in certain circumstances to exercise supplemental jurisdiction over claims arising under State law.

Section 1367 further provides that "[t]he period of limitations for any [such] claim ... shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).

The question presented is whether the tolling provision in § 1367(d) suspends the limitations period for the state-law claim while the federal suit is pending and for thirty days after the claim is dismissed, or whether the tolling provision does not suspend the limitations period but merely provides 30 days beyond the dismissal for the plaintiff to refile.

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OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 135 A.3d 334, and is reprinted in the Appendix to the Petition ("Pet App.") at 1a. The opinion of the Superior Court for the District of Columbia is unreported and is reprinted at Pet. App. 12a.

JURISDICTION

The District of Columbia Court of Appeals issued its opinion on April 7, 2016. Petitioner's timely petition for panel and *en banc* rehearing was denied on July 20, 2016. The jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1367(a)

Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

28 U.S.C. § 1367(c)

The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(d)

The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

STATEMENT OF THE CASE

Section 1367 of Title 28 authorizes federal courts to exercise "supplemental jurisdiction" over certain state-law claims when they are paired with a related claim within the court's original jurisdiction. Section 1367's grant of authority is permissive, however, rather than mandatory. A federal court may "decline" to hear the state-law claim under specified circumstances, such as where the issue of state law is complex or where the court has dismissed the underlying federal claims. This permissive structure gives rise to the question that is the subject of this appeal: how long does a plaintiff have to refile her state-law claims in state court once a federal court has declined to exercise supplemental jurisdiction over them?

Congress could hardly have provided a clearer answer. In § 1367(d), Congress specified that the "period of limitations" for a supplemental jurisdiction claim "shall be tolled while the claim is pending and for 30 days after it is dismissed unless State law provides for a longer period." In other words, the statute of limitations for the supplemental state-law claim does not run while the claim is pending in federal court and for 30 days after dismissal. A plaintiff who brings suit in federal court with, say, 90 days remaining on the limitations period for her state-law claim will have 90 days to refile her claim in state court, beginning 30 days after the federal dismissal.

The court below disagreed and instead adopted what it called the "grace period" interpretation of § 1367(d). It held that the statute of limitations *continues* to run while the claim is pending in federal court, and that

§ 1367 merely allows 30 days to refile in the event that the statute of limitations expires during the pendency of the state-law claim. That interpretation is plainly incorrect. Treating the statute of limitations as continuing to run while the claim is pending is not "tolling" but its opposite.

The court below paid little attention to the text of § 1367. Instead it rested its decision almost exclusively on legislative history (which it misread) and supposed federalism concerns (without citing this Court's unanimous opinion holding that § 1367(d) does not impinge upon state sovereignty). The reality is that there is nothing novel about the tolling structure of § 1367(d). The U.S. Code is replete with examples of Congress tolling the statute of limitations for a claim while a litigant seeks review in another judicial or administrative forum. Congress adopted the same regime here to encourage litigants to bring all their claims—state and federal—arising out of the same controversy in a single action. This Court should uphold Congress's clear tolling rule and reverse the decision below.

A. Statutory Background

Supplemental jurisdiction is the concept that "once a court has original jurisdiction over some claims in the action, it may exercise ... jurisdiction over additional claims that are part of the same case or controversy." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005).

For many years, supplemental jurisdiction was defined by a body of judge-made law in which the leading

case was *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966). In *Gibbs*, this Court held that federal courts could exercise jurisdiction over "state and federal claims ... derive[d] from a common nucleus of operative fact." *Id.* at 725. That exercise of jurisdiction was one "of discretion, not of plaintiff's right." *Id.* at 726. District courts could decline to hear state-law claims by dismissing them without prejudice, allowing the plaintiff to refile in a state forum. *See id.*

This Court subsequently issued a series of decisions in which it reaffirmed the rule of *Gibbs* but declined at times to construe the scope of supplemental jurisdiction more "broadly" in the absence of any express statutory authorization for the doctrine. *See Exxon*, 545 U.S. at 553-57 (recounting history). In the last decision in that line of cases, this Court observed that "[w]hatever we say regarding the scope of jurisdiction conferred by a particular statute can of course be changed by Congress." *Finley v. United States*, 490 U.S. 545, 556 (1989).

One year later, in 1990, "Congress accepted the invitation" by passing the Judicial Improvements Act, which codified the doctrine of supplemental jurisdiction at 28 U.S.C. § 1367. *Exxon*, 545 U.S. at 557. In the House Report accompanying the Act, Congress explained that it wished to remove "doubt" about the power of federal courts to hear supplemental jurisdiction claims, and that it believed that "[s]upplemental jurisdiction has enabled federal courts and litigants to ... deal economically—in single rather than multiple litigation—with related matters." H.R. Rep. No. 101-

734, at 28 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 6860, 6874 ("House Report").

Three subsections of § 1367 are relevant here. Subsection (a) authorizes supplemental jurisdiction over "all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a).

In subsection (c), Congress provided that a district court nonetheless "may decline to exercise supplemental jurisdiction over a claim under subsection (a)" if it determines that the state-law claim substantially predominates or raises novel or complex issues; if the district court has dismissed all federal claims; or in other exceptional circumstances. 28 U.S.C. § 1367(c).

Finally, in subsection (d), Congress provided that if the district court dismisses a claim over which there is supplemental jurisdiction, "[t]he period of limitations for any claim asserted under subsection (a) [*i.e.*, a supplemental jurisdiction claim] ... shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d).[1] As the House Report explains, the purpose of the tolling rule is "to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal

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[1] The "District of Columbia" is a "State" for purposes of § 1367. *See* § 1367(e).

court." House Report at 30, *as reprinted in* 1990 U.S.C.C.A.N. at 6876.

Since 1990, this Court has twice had occasion to construe § 1367(d). In *Raygor v. Regents of University of Minnesota*, 534 U.S. 533 (2002), this Court considered the scope of supplemental jurisdiction in the context of state-law suits against States. *Raygor* held that Congress had not intended § 1367 to abrogate state sovereign immunity by authorizing supplemental jurisdiction over state-law claims against unconsenting States. *Id.* at 541. And because such claims "do not fall within the proper scope" of the supplemental jurisdiction statute, the Court further held that § 1367(d)'s tolling provision did not apply to them. *Id.* at 545. *Had* § 1367(d) applied to such claims, the Court explained that it would have "toll[ed] the state statute of limitations for 30 days in addition to however long the claim had been pending in federal court." *Id.* at 542.

Then, in 2003, the Court squarely rejected the argument that § 1367(d) unconstitutionally "violates principles of state sovereignty" by tolling the state statute of limitations for supplemental jurisdiction claims. *Jinks v. Richland Cty.*, 538 U.S. 456, 464 (2003). The Court held that Congress "unquestionably" had the constitutional authority to adopt § 1367(d)'s "straightforward tolling rule" because it "promotes fair and efficient operation of the federal courts and is therefore conducive to the administration of justice." *Id.*

B. Factual and Procedural Background.

Petitioner Stephanie Artis was hired by the District of Columbia as a health inspector in August 2007. Pet.

App. 2a. While in that position, Artis alleges that she became aware of misconduct by her superiors. Court of Appeals Joint Appendix ("D.C. App.") at 3. Among other misconduct, she alleged that her supervisor falsified reports containing her monthly statistics. *Id.* She further alleged that supervisor had verbally abused her using threatening language. *Id.*

Based on this conduct, Artis filed a complaint with the D.C. Office of Inspector General in February 2009, and a discrimination claim with the U.S. Equal Employment Opportunity Commission ("EEOC") in April 2009. Artis submitted other grievances in March and April 2010. *Id.* at 4. These grievances were based on, among other things, her supervisor's refusal to allow her to attend training classes that Artis's male colleagues were allowed to attend, her supervisor's refusal to conduct her evaluations in person, and her supervisor's improper dismissal of notices of infraction that Artis had issued in carrying out her duties as a health inspector. *Id.* at 3-5.

On November 15, 2010, Artis learned that the Department of Health declined to renew her contract. *Id.* at 5-6. She was given no explanation for the decision other than a statement from the District that "there is no cause for us releasing her, we are just not keeping her." *Id.* at 6. Artis subsequently filed a final grievance in January 2011, alleging the termination was retaliation for her actions against her supervisor. *Id.*

On December 16, 2011, Artis sued the District of Columbia in the United States District Court for the District of Columbia, alleging she was terminated in violation of Title VII, 42 U.S.C. § 2000e-5. She also

asserted claims under the District of Columbia Whistleblower Act, D.C. Code § 1-615.54, the District of Columbia False Claims Act, D.C. Code § 2-381.04, and for wrongful termination against public policy. *See Artis v. District of Columbia*, 51 F. Supp. 3d 135, 137 (D.D.C. 2014).

On June 27, 2014, the district court granted summary judgment to the District of Columbia on the Title VII claim, which was premised solely on Artis's claims that her supervisor had prohibited her from attending certain training classes and had refused to conduct her evaluations in person. *Id.* at 140. The court found that although "the factual record, construed in the light most favorable to Artis, seems to support both of these allegations," they did not "rise[] to the level of an 'adverse action' under the law of this Circuit" even if they were true. *Id.*

Having dismissed the only federal claim Artis brought, the district court declined to exercise supplemental jurisdiction over the remaining state claims pursuant to 28 U.S.C. § 1367(c)(3). *Id.* at 141. The district court expressly stated that it was not passing on the merits of Artis's claims under District law, but that it was merely declining to consider them given that it had dismissed the only federal claim in her complaint. *Id.* at 137. In so ruling, the district court explained that "Artis will not be prejudiced because 28 U.S.C. § 1367(d) provides for a tolling of the statute of limitations during the period the case was here and for at least 30 days thereafter." *Id.* at 142.

On August 25, 2014—fifty-nine days after that dismissal—Artis re-filed in D.C. Superior Court. Pet.

App. 3a. On January 29, 2015, the Superior Court granted the District of Columbia's motion to dismiss, finding Artis's claims time-barred.[2] Pet. App. 17a-18a. The court acknowledged that other courts had interpreted § 1367(d) to mean that the limitations period for a supplemental state law claim would not continue to run while that claim was pending in federal court and for 30 days thereafter. Pet. App. 15a n.2. But it found that interpretation unpersuasive primarily because Artis

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[2] The Superior Court did not explain its calculations, but the D.C. False Claims Act and the tort of wrongful termination each have a three-year statute of limitations that started to run on the date Artis was terminated, November 10, 2010. *See* D.C. Code § 2-381.04(a) (D.C. False Claims Act); *Stephenson v. American Dental Ass'n*, 789 A.2d 1248, 1252 (D.C. 2002) (tort of wrongful termination governed by D.C.'s catch-all three-year limitations period and begins to run on the date when plaintiff has unequivocal notice of termination (citing D.C. Code § 12-301(8))). When Artis filed her suit in federal court on December 16, 2011, she had approximately 13 months remaining on the three-year limitations period for these claims. The federal court dismissed her suit on June 27, 2014, more than three years after these claims accrued. Artis refiled in Superior Court 59 days after the federal dismissal, and the court found those claims time-barred.

Artis's whistleblower claim had a one-year limitations period, which began to accrue when Artis "first bec[a]me[] aware" that she was terminated because she reported her supervisor's misconduct. D.C. Code § 1-615.54(a)(2). The complaint does not allege precisely when Artis first became aware that the District terminated her because of her actions against her supervisor; she pled only that the union submitted a grievance charging that her termination was retaliatory in January of 2011. Pet. App. 2a-3a; Court of Appeals Joint Appendix (D.C. J.A. 1) at 6. Accordingly, Artis's whistleblower claim accrued in January 2011, and thus also was time-barred under the Superior Court's interpretation of § 1367(d).

was not "barred" from filing a "duplicative" state court suit while her federal suit was pending. Pet. App. 14a-15a.

Artis appealed and on April 7, 2016, the D.C. Court of Appeals affirmed the dismissal on limitations grounds. Pet. App. 2a, 11a. The appellate court began by acknowledging the split in authority as to whether § 1367(d) "suspended" the statute of limitations while the state law claim was pending in federal court and for 30 days thereafter, or whether § 1367(d) provided a "grace period" in which the limitations period would continue to run while the claim was pending, but that the plaintiff would have "a thirty-day 'grace period' allowing claims that would otherwise have become barred to be pursued in state court if refiled no later than 30 days after federal court dismissal." Pet. App. 6a-7a (citations and internal quotation marks omitted).

In choosing between these interpretations, the appellate court spent little time with the text of § 1367(d), which it found ambiguous. Pet. App. 2a, 5a-6a. Instead, the court relied primarily on a decision from the California Supreme Court that contended that Congress had intended to implement a 1969 recommendation from the American Law Institute to allow re-filing in state court only "within 30 days after dismissal." Pet. App. 9a. The Court also concluded that the grace period approach "better accommodates federalism concerns" by reducing the time period § 1367(d) allows for refiling in federal court. *Id.*

Artis filed a timely petition for rehearing that was denied. Pet. App. 19a. Artis then timely filed a petition

for certiorari to this Court, which was granted on February 27, 2017.

SUMMARY OF ARGUMENT

I. Section 1367(d)'s tolling rule could hardly be clearer: "The period of limitations for any claim asserted under subsection (a) [i.e., a supplemental jurisdiction claim] ... *shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.*" 28 U.S.C. §1367(d) (emphasis added).

A. To "toll" a statute of limitations is to suspend it. That is what "tolled" means in the dictionary, and that is what this Court has repeatedly held. Section 1367(d) accordingly tolls, or suspends, the limitations period for a supplemental jurisdiction claim while it is "pending" in federal court and for "30 days after it is dismissed." A litigant who comes to federal court with one year left on the limitations period for her state-law claim will have one year remaining on that claim in the event it is dismissed, and that year begins running 30 days after the date of dismissal. Indeed, this Court gave § 1367(d) just that construction in a prior opinion discussing its scope: "[Section § 1367(d)] toll[s] the state statute of limitations for 30 days in addition to however long the claim had been pending in federal court." *Raygor*, 534 U.S. at 542.

Section 1367(d)'s command to toll the limitations period "while the claim is pending" works just like numerous others in the U.S. Code. For example, 28 U.S.C. § 1332 authorizes plaintiffs to bring "mass tort" claims in federal court and mandates that the limitations

period "shall be deemed tolled during the period that the action is pending in Federal court." Provisions like these would be nonsensical if the "tolled" limitations period continued to run while the claim was pending in the first forum. Their very point is to protect litigants from losing claims while they are being advanced in a preferred forum. So too with § 1367(d). In order to encourage litigants to bring all their factually related claims—state and federal—in a single action, Congress ensured that a litigant would be no worse off limitations-wise for having invoked supplemental jurisdiction in the event her supplemental claim is dismissed.

B. The "grace period" interpretation the court below adopted is flatly foreclosed by the text of § 1367(d). Under that interpretation, the statute of limitations for the supplemental claim *continues* to run while it is pending in federal court, but the litigant receives 30 days to refile her claim in state court in the event that the limitations period expires while the claim is pending.

That is not "tolling." If Congress had wanted the statute of limitations to continue to run, subject to a grace period in the event it expired, it would have said so. The U.S. Code contains several such grace period provisions and none of them use the word "toll." For example, the provision that sets the statute of limitations for money damages claims by the United States says that "[i]n the event that any action ... is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, *regardless of whether the action would otherwise then be barred* by this section." 28 U.S.C. § 2415(e) (emphasis added).

II. The court below rested its interpretation not on statutory text, but on legislative history and purported federalism concerns. Even leaving aside § 1367(d)'s utter lack of ambiguity, both arguments are misplaced.

A. At the outset, it makes perfect sense that Congress would choose to toll the limitations periods on supplemental claims while they were pending in federal court and for 30 days after dismissal. Tolling encourages litigants to bring all their related claims, both state and federal, in a single action, much like other tolling provisions in the U.S. Code encourage litigants to bring claims in a preferred forum first. And tolling under § 1367(d) does not prejudice the defendant because, by definition, the plaintiff will have timely filed her claims at the outset and thereby given notice to the defendant of those claims.

While § 1367 ensures that every litigant who timely files a supplemental claim has at least 30 days to refile, Congress had good reason to provide additional time to litigants who promptly filed their supplemental claims in federal court. As this case demonstrates, it can easily take years for a supplemental claim to be dismissed, at which point a litigant will routinely face numerous strategic decisions. She will have to decide whether to appeal the federal dismissal. She will have to decide whether she wishes to obtain new counsel, or, if her federal counsel declines to represent her further, she may be forced to find new counsel. And, she will have to decide whether she should add, change, or eliminate the state-law claims she presents to the state court. Providing a diligent litigant with the balance of her

limitations period appropriately gives her more time to make these decisions.

As for legislative history, what little there is supports Petitioner. The House Report accompanying § 1367(d) states that the provision was intended to "prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations *while a supplemental claim was pending in federal court.*" House Report at 30, *as reprinted in* 1990 U.S.C.C.A.N. at 6876 (emphasis added). Only Petitioner's interpretation tolls the limitations period "while a supplemental claim was pending in federal court."

B. The court below concluded that Congress intended to adopt a 1969 recommendation from the American Law Institute that would have provided a 30-day grace period, but that argument fails on multiple levels. Most importantly, Congress did not enact the grace period language of the ALI report; it provided that the limitations period "shall be tolled while the claim [is] pending." Moreover, although the House Report acknowledges that it was adopting the ALI's recommendations concerning other provisions, it never mentions the report in connection with § 1367(d). House Report at 23, *as reprinted in* 1990 U.S.C.A.A.N. at 6869. That shows that Congress was aware of the ALI's recommendations and chose not to adopt them regarding tolling.

At bottom, it turns out that the only would-be connection between the ALI recommendation and § 1367(d) is a law review article by three professors who assisted in the drafting of § 1367, and who claimed that

it was modelled—despite its contrary text—on the ALI's recommendation. Relying on a law review article in lieu of statutory text—and indeed even in lieu of legislative history—would be engaging in precisely the kind of "murky" atextual analysis this Court has rejected in other cases interpreting the scope of § 1367(d). *Exxon*, 545 U.S. at 568.

As for federalism, this Court has not only upheld provisions tolling state law limitations periods going back at least to the Civil War, it has specifically held that § 1367(d) does not impinge upon state sovereignty. As this Court explained in *Jinks*, the Constitution gives Congress the power to oversee the administration of the lower federal courts, and Congress unquestionably was entitled to use that authority to adopt a tolling provision to encourage litigants to bring all of their factually related claims in a single related action. *Jinks*, 538 U.S. at 463-64. Congress was constitutionally empowered to adopt a tolling rule for supplemental jurisdiction claims, and this Court should enforce the rule Congress so plainly adopted.

ARGUMENT

I. Section 1367's Plain Text Establishes That Petitioner's Suit Is Timely.

A. Section 1367(d) Suspends The Statute Of Limitations For Supplemental Claims While They Are Pending In Federal Court And For 30 Days After Dismissal.

Statutory construction begins "with the language of the statute itself." *Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 566 U.S. 399, 412 (2012) (internal quotation marks omitted). "In this case it is also where the inquiry should end" because §1367(d) is crystal clear. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989).

Section 1367(d) provides that the "period of limitations" for a supplemental jurisdiction claim "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. §1367(d).

To "toll" a statute of limitations for a given period is to "suspend it," as both legal and general dictionaries attest. *See, e.g., Black's Law Dictionary* 1488 (6th ed. 1990) (defining "toll" as "[t]o suspend or stop temporarily as the statute of limitations is tolled during the defendant's absence from the jurisdiction and during the plaintiff's minority."); *Black's Law Dictionary* 1716 (10th ed. 2014) (defining "toll" as "of a time period, esp. a statutory one to stop the running of; to abate"); *The Random House Dictionary of the English Language* 1992 (2d ed. 1987) ("to suspend or interrupt (as a statute of limitations)). Thus, the plain meaning of §1367(d) is that the statute of limitations "shall be [suspended]

while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period."[3]

This Court has likewise repeatedly described tolling as meaning suspending. *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014) (characterizing equitable tolling as "a doctrine that 'pauses the running of, or "tolls," a statute of limitations'"); *Am. Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 554 (1974) (characterizing tolling as "suspend[ing] the applicable statute of limitations"); *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991) (per curiam) ("Principles of equitable tolling usually dictate that when a time bar has been suspended and then begins to run again upon a later event, the time remaining on the clock is calculated by subtracting from the full limitations period whatever time ran before the clock was stopped."); *Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 889 (1988) ("Ohio recognizes a 4-year statute of limitations in actions for breach of

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[3] Some states have provisions that can provide for a longer time to refile than §1367(d) offers. For example, under Arizona law, "[i]f an action is commenced within the time limited for the action, and the action is terminated ... the plaintiff ... may commence a new action for the same cause after the expiration of the time so limited and within six months after such termination." Ariz. Rev. Stat. § 12–504(A). If a plaintiff filed an Arizona state law claim on the last day of the limitations period in federal court, this provision would provide six months rather than §1367(d)'s 30 days to refile. *See also, e.g.*, Ark. Code Ann. § 16-56-126 (providing one year to refile an action that was timely commenced and not dismissed on the merits); Okla. Stat. Ann. tit. 12, § 100 (same under Arkansas law); N.Y. C.P.L.R. § 205 (six months under New York law); Colo. Rev. Stat. § 13-80-111(1) (90 days under Colorado law).

contract or fraud. The statute is tolled, however, for any period that a person or corporation is not 'present' in the State. ... [W]e find the Ohio statute that suspends limitations protection for out-of-state entities is a violation of the Commerce Clause.").[4]

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[4] Other examples abound of this Court referring to the "tolling" of a limitations period as "suspending." *See, e.g., Kellogg Brown & Root Servs., Inc. v. United States, ex rel. Carter*, 135 S. Ct. 1970, 1976 (2015) (noting that "Congress changed the [Wartime Suspension of Limitations] Act's triggering event, providing that tolling is available not only when the United States is at war," in reference to prior iteration of Act instructing that certain statutes of limitations "shall be suspended" during wartime (internal quotation marks and alterations omitted)); *Wood v. Milyard*, 132 S. Ct. 1826, 1831-32 (2012) ("That motion, Wood asserts, remained pending (thus continuing to suspend the one-year clock) until at least August 2004, when he filed his second motion for postconviction relief in state court. The 2004 motion, the State does not contest, was 'properly filed.' Wood argues that this second motion further tolled the limitations period."); *Stogner v. California*, 539 U.S. 607, 652 (2003) ("It is a common policy for States to suspend statutes of limitations for civil harms against minors ... Some States toll the limitations periods for minors even where a guardian is appointed ... and even when the tolling conflicts with statutes of repose"); *Missouri v. Jenkins*, 495 U.S. 33, 45-46 (1990) ("[I]t has been the consistent practice of the Court to treat petitions for rehearing timely presented to the Courts of Appeals as tolling the start of the period in which a petition for certiorari must be sought until rehearing is denied or a new judgment is entered on the rehearing.... A timely petition for rehearing ... operates to suspend the finality of the ... court's judgment" (internal quotation marks and alterations omitted)); *Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 466 (1975) ("[T]here was a substantial body of relevant federal procedural law to guide the decision to toll the limitation period, and significant underlying federal policy that would have conflicted with a decision not to suspend the running of the statute"; *Leh v. Gen. Petroleum Corp.*, 382 U.S. 54, 63 (1965) ("The action upon which plaintiff relied

Indeed, this Court has construed § 1367(d) itself to suspend the limitations period just as Petitioner contends. In *Raygor*, this Court held that because § 1367(d)'s effect is to "toll the state statute of limitations for 30 days *in addition to however long the claim had been pending in federal court*" the Court would not construe the provision to apply to state-law claims seeking relief against States because it would raise constitutional concerns to extend the limitations period against unconsenting state sovereigns. 534 U.S. at 542 (emphasis added). While the parties in *Raygor* did not brief the precise mechanics of how § 1367(d) operates, the fact that this Court could easily perceive its meaning further confirms that § 1367(d) means what it says.

Further confirmation that "tolled" means "suspended" comes from the U.S. Code, which is replete with tolling provisions that would be nonsensical if tolled meant that the statute of limitations continued to run. These provisions typically toll the limitations period on a claim while a litigant is seeking review in some other judicial or administrative forum. To point to just a few examples:

- 28 U.S.C. § 1332 permits the removal of "mass actions" to federal court and provides that "[t]he limitations periods on any claims asserted in a

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as suspending the running of limitations was a Federal Trade Commission proceeding ... against Minnesota Mining but not against Essex. Essex was not a party to the interlocutory appeal in the private action and no contention was made here that the difference in parties prevented tolling of limitations as to Minnesota Mining.").

mass action that is removed to Federal court pursuant to this subsection *shall be deemed tolled* during the period that the action is pending in Federal court." 28 U.S.C. § 1332(d)(11)(D) (emphasis added).

- 21 U.S.C. § 1604 allows suits to proceed against certain biomaterial suppliers where the Secretary of Health and Human Services makes a certain finding and provides that "[a]ny applicable statute of limitations *shall toll during the period* from the time a claimant files a petition with the Secretary under this paragraph until such time as either (i) the Secretary issues a final decision on the petition, or (ii) the petition is withdrawn." 21 U.S.C. § 1604(b)(3)(C) (emphasis added).

- 42 U.S.C. § 233 provides a remedy against the United States for certain injuries caused by employees of the Public Health Service, and states that the "time limit for filing a claim under this subsection ... *shall be tolled* during the pendency of a[n] [administrative] request for benefits." 42 U.S.C. § 233(p)(3)(A)(ii) (emphasis added).

- 46 U.S.C. § 53911 provides, in a provision entitled "*Tolling of limitations period*" that if a plaintiff submits a claim for war-related vessel damage to the Secretary of Transportation, "the running of the limitations period for bringing a civil action is suspended until the Secretary denies the claim, and for 60 days thereafter." 46 U.S.C. § 53911(d) (emphasis added).

- 5 U.S.C. § 552(a) gives the government 20 days to respond to certain FOIA requests, but provides that the agency may "*toll the 20-day period* while it is awaiting" information it had requested from the FOIA requester. 5 U.S.C. § 552(a)(6)(A)(ii)(I) (emphasis added).[5]

In all of these provisions, tolling means that limitations period is suspended while some other event—another suit, an administrative review, an alternative request for relief, etc.—is taking place. If "tolled" did not mean "suspended," the provision would be meaningless because the limitations period would continue to run while the claim was pending elsewhere. The word "tolled" in § 1367(d) has just the same meaning: it suspends the limitations period on the supplemental claim "while the claim is pending and for a period of 30 days after it is dismissed" from federal court.

B. The Grace Period Interpretation Cannot Be Reconciled With § 1367(d)'s Text.

Against all this, there is no textual support for the "grace period" interpretation of § 1367(d) adopted by the

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[5] Other examples of statutory provisions using the word "toll" to mean "suspend" include 8 U.S.C. § 1182(a)(9)(B)(iv); 8 U.S.C. § 1186a(g); 8 U.S.C. § 1229b(b)(2)(A); 12 U.S.C. § 1831q(k)(1); 12 U.S.C. § 3419; 15 U.S.C. § 6603(h)(5); 15 U.S.C. § 6606; 15 U.S.C. § 6614(e)(3)(C); 18 U.S.C. § 2712(e); 18 U.S.C. app. 2 § 2, art. VI(a); 21 U.S.C. § 1604(b)(3)(C); 28 U.S.C. § 1332(d)(11)(D); 28 U.S.C. § 2263(b); 29 U.S.C. § 1854(f); 33 U.S.C. § 913(d); 33 U.S.C. § 930(f); 42 U.S.C. § 233(p)(3)(A)(ii); 42 U.S.C. § 247d-6e(d)(2); 42 U.S.C. § 4370m-2(c)(2)(G)(iii); 46 U.S.C. § 30508(d); 46 U.S.C. § 53911(d); 49 U.S.C. § 41714(i)(3); 50 U.S.C. § 3936(a).

court below. The phrase "tolled while the claim is pending and for a period of 30 days after it is dismissed" simply does not mean that the statute of limitation "continues to run while the claim is pending but provides for a period of 30 days after the claim is dismissed in the event the limitations period has since expired." That construction ignores the phrase "tolled while the claim is pending" instead of interpreting it.

Put another way, the grace period approach cannot be squared with the numerous statutes discussed above, *see supra* at 20-22, that call for tolling while a claim is pending in another forum. Those statutes do not specify any additional period of tolling, analogous to the additional 30 days of tolling in § 1367(d), that could possibly be construed as a "grace period." Thus, the lower court's interpretation implies that the addition of an extra 30 days of tolling *transforms* the meaning of the word "tolled" from "stops running" to "continues running." That cannot be right. "[S]tatutes" are not "chameleon[s]." *Clark v. Martinez*, 543 U.S. 371, 382 (2005). The word "tolled" means the same thing in § 1367(d) as it does in every other statute that "tolls" a limitations period "while the claim is pending": "suspended."

The grace period interpretation also makes a hash out of the statute's dual command that the limitations period for the supplemental claim "shall be tolled *while* the claim is pending *and* for a period of 30 days after it is dismissed." This language calls for two distinct periods of tolling: the period while the claim "is pending" and the period of "30 days after" the claim is dismissed. But under the grace period interpretation § 1367(d)

never affects the statute of limitations "while the claim is pending." The limitations period continues to run unabated during that time. And in cases where more than 30 days still remain on the limitations period after the claim is dismissed, § 1367(d) has no effect on the limitations period *at all*.

In the lower court's view, the only time § 1367(d) does any work is where the statute of limitations has expired while the federal claim is pending, or fewer than 30 days remain on the date the claim is dismissed, in which case the litigant receives 30 days to refile. But Congress did not want a provision that kicked in solely in that scenario; it called for tolling during both pendency of the claim and for the 30 days following, regardless of how much time remained on the limitations period. The grace period interpretation does not do that.

In arguing for the grace period approach, the lower court invoked this Court's decision in *Chardon v. Fumero Soto*, 462 U.S. 650, 660-61 (1983), as supporting the proposition that there could be various "tolling effects" other than suspension. Pet. App. 7a. But *Chardon* only confirms that the lower court is incorrect. In a footnote, *Chardon* noted that it was "possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began." 462 U.S. at 652 n.1. While Congress has crafted provisions that establish a fixed period for refiling regardless of the original statute of limitations, they look nothing like § 1367(d).

For example, in the six-year limitations provision governing suits for money damages by the United States for breach of contract, Congress provided that "[i]n the event that any action ... is timely brought and is thereafter dismissed without prejudice, the action may be recommenced within one year after such dismissal, *regardless of whether the action would otherwise then be barred by this section.*" 28 U.S.C. § 2415(e) (emphasis added).

Likewise, for certain suits under the Equal Credit Opportunity Act, Congress provided that "[n]o such action shall be brought later than 5 years after the date of the occurrence of the violation." 15 U.S.C. § 1691e(f). That five-year period is subject, however, to the "except[ion]," that where a government agency has brought a timely suit, an individual then may bring an action "*not later than one year* after the commencement of that proceeding or action." *Id.* (emphasis added).

Notably absent from these provisions is the word "toll." Instead of suspending the statute of limitations for the claims in question, these kinds of statutes give a litigant additional time to bring a suit in the event the limitations period has already expired. Congress is certainly entitled to adopt timing provisions of that kind, but it is equally certain that is not the kind of timing provision that Congress employed in § 1367(d).

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In sum, the text of § 1367(d) is perfectly clear. The statute of limitations for a supplemental jurisdiction claim is tolled, *i.e.*, suspended, during the time when the

claim is pending in federal court and for 30 days after the claim is dismissed.

II. Interpreting "Tolled" To Mean "Suspended" Serves § 1367's Purposes.

The court below spent little time with § 1367(d)'s text, and instead rejected the suspension interpretation on the ground that it supposedly did not comport well with the "Act's legislative history and intent." Pet. App. 6a-7a, 9a. The lower court erred because § 1367(d)'s text resolves the question presented. *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) ("[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous."). But even if there were some ambiguity about what § 1367(d) means, construing "tolled" to mean "suspended" serves the purposes of the provision well. The court below disagreed only because it misconstrued the provision's legislative history and ignored this Court's prior rulings on § 1367(d).

A. Giving § 1367(d) Its Plain Meaning Carries Out Congress's Purpose.

The lower court concluded that—§ 1367(d)'s text aside—Congress would not have wanted to suspend the limitations period on a supplemental claim while it was pending in federal court. But § 1367(d) is no different from the many other tolling provisions in the U.S. Code. As explained above, *see supra* at 20-22, Congress frequently sets up tolling regimes that suspend the limitations period while a claim is pending in another judicial or administrative forum. Tolling the limitations period in this way encourages the litigant to bring her claim in that preferred forum first. It also helps ensure

that a plaintiff need not take the inefficient step of bringing actions in two forums at once. *Cf. Am. Pipe & Constr. Co.*, 414 U.S. at 554 ("We are convinced that the rule most consistent with federal class action procedure must be that the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.")

So too with § 1367. As this case illustrates, it can easily take a year or more to go from the filing of a complaint in federal court to an order dismissing the supplemental claims under § 1367(c). Even where a plaintiff diligently sues in court, her limitations period might very well run, absent tolling, by the time the federal court declines to exercise jurisdiction over the claim. By tolling the limitations period on the supplemental claim "while it is pending," § 1367(d) ensures that the plaintiff has a fair opportunity to bring the supplemental claim in state court.

Of course, the grace period approach also guarantees a plaintiff who is unsuccessful in federal court the opportunity to bring a claim in state court. But interpreting § 1367(d) according to its terms makes sense because it ensures that a litigant is no worse off for having brought her claim in the event that the court ultimately declines to consider it. Under the interpretation of the court below, a litigant who files a claim in federal district court diligently—with months or years left on the statute of limitations—may be treated the exact same way as a litigant who waits until one day before the statute of limitations expires before filing suit

in federal court. For both litigants, if the statute of limitations expires while the federal lawsuit is pending, they get 30 days to refile and no more.

It is easy to see why Congress thought that a diligent litigant should have more than that bare minimum. Refiling is often not merely a matter of replacing the case caption on a complaint. Following dismissal from federal court, a plaintiff might have to find new counsel, and to reassess litigation strategy or the evidence in light of the federal court's decision. At the same time, the plaintiff might also have to decide whether to appeal the dismissal of her federal claim. *See* Fed. R. App. P. 4(a)(1)(A) (requiring appeal to be filed within 30 days of final judgment). And while she is making these decisions, she must also consider whether it is cost-effective or financially feasible to proceed, particularly where a dismissed federal claim would have offered a greater recovery or attorneys' fees. At the same time, the key rationales for statutes of limitations—namely, "preventing surprises" to defendants and "barring a plaintiff who has slept on his rights," *American Pipe & Construction Co.*, 414 U.S. at 554 (internal quotation marks omitted)—are respected where a plaintiff has first timely filed in federal court.

What little legislative history there is concerning § 1367(d) shows that Congress intended not just to provide 30 days of grace but rather to suspend the limitations period while the supplemental claim was pending. In the House Report that accompanied § 1367, Congress specifically stated that it adopted § 1367(d) to "prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the

period of limitations *while a supplemental claim was pending in federal court.*" House Report at 30, *as reprinted in* 1990 U.S.C.C.A.N. at 6876 (emphasis added). Tolling "the running of the period of limitations while a supplemental claim was pending in federal court" is precisely what the suspension interpretation does and the grace-period approach does *not* do.

B. The Court Below Misconstrued § 1367's Legislative History And Ignored This Court's Precedent.

The court below adopted the grace period interpretation based on its reading of the legislative history and purported federalism concerns. Both rationales are incorrect.

1. The court of appeals concluded that it "is apparent that in drafting subsection (d) of the Act, Congress incorporated recommendations from the academic community, specifically the American Law Institute (ALI)." Pet. App. 8a. In its 1969 Study of the Division of Jurisdiction Between State and Federal Courts ("Study"), the ALI did recommend providing a 30-day grace period for the refiling of certain claims, but Congress pointedly did not adopt that recommendation in § 1367, and, if anything, the legislative history shows that Congress was aware of that proposal and rejected it.

The ALI Study did not specifically discuss the doctrine of supplemental jurisdiction (perhaps because it was commissioned several years before this Court's decision in *Gibbs*). The Study, however, did call for a general provision specifying that "a new action on the

same claim brought in another court shall not be barred by a statute of limitations that would not have barred the original action had it been commenced in that court, if such new action is brought in a proper court, federal or State, within thirty days after dismissal of the original claim has become final or within such longer period as may be available under applicable State law." Study § 1386(b), at 65.

Had Congress adopted this or similar language for § 1367, it would have supported the lower court's interpretation. But Congress did not adopt that language. Instead of providing a grace period allowing refiling "within thirty days," Congress went further and expressly required tolling of the limitations period "while the claim is pending" in federal court. That "tolling while pending" language is absent from the ALI's proposed language.

Nor does it appear that Congress used language divergent from the ALI Study by accident. The House Report accompanying the Judicial Improvements Act mentions the Study, but it does so in the context of a wholly different provision, 28 U.S.C. § 1391, which governs venue in the federal courts. Regarding that provision, Congress specifically stated that its approach was "taken from the ALI study" House Report at 23, *as reprinted in* 1990 U.S.C.C.A.N. at 6869. No such language is to be found regarding § 1367, nor indeed any other provision of the Judicial Improvements Act.

In concluding that Congress meant to adopt the Study's recommendation for § 1367, the court below invoked a decision of the California Supreme Court that had reached that conclusion. Pet. App. 9a (citing *City of*

Los Angeles v. County of Kern, 328 P.3d 56, 63 (2014)). But *Kern's* reasoning was based not on the text of § 1367, nor even the House Report accompanying it, but rather a law review article written by three professors who had participated in drafting § 1367. That article asserts, without citation, that § 1367(d) "implements in specific context a general recommendation of the American Law Institute in its 1969 Study of the Division of Jurisdiction Between State and Federal Courts, § 1386(b)." Thomas M. Mengler et al., *Congress Accepts Supreme Court's Invitation to Codify Supplemental Jurisdiction*, 74 Judicature 213, 216 n.28 (1991).

The views of scholars—even those involved in the drafting of legislation—are no substitute for the "statutory text" that Congress actually enacted, and in this case do not even rise to the level of legislative history given that the House Report makes no mention of the ALI Study regarding § 1367(d). *Exxon*, 545 U.S. at 570. Indeed, in *Exxon*, this Court refused to credit the views of these same scholars because although their views were arguably consistent with the House Report in that case, they were at odds with what "§ 1367 on its face permits." *Id.* (internal quotation marks omitted). Here, the scholars' assertions are not even consistent with the House Report, let alone what "§ 1367 on its face permits." Accordingly, they should be rejected again.

2. The other ground relied upon by the court below was that giving "tolling" its plain meaning would not "accommodate[] federalism concerns" and be inconsistent with "our presumption favoring narrow interpretations of federal preemption of state law." Pet. App. 9a-10a.

Strikingly absent from the lower court's federalism discussion was any mention of this Court's decision in *Jinks*, which squarely rejected the argument that § 1367(d) "violates principles of state sovereignty." 538 U.S. at 464. As Justice Scalia explained for a unanimous Court, it has been settled at least since this Court's decision in *Stewart v. Kahn*, 78 U.S. (11 Wall.) 493 (1870), that Congress may, in appropriate circumstances, require state courts to apply a federal tolling rule in adjudicating state-law causes of action.[6] *Jinks*, 538 U.S. at 462.

Jinks held that it was wholly appropriate for Congress to provide a tolling rule for supplemental claims in exercising its constitutional authority "'[t]o constitute Tribunals inferior to the supreme Court,' U.S. Const., Art. I, § 8, cl. 9, and to assure that those tribunals may fairly and efficiently exercise '[t]he judicial Power of the United States,' Art. III, § 1." *Id.* at 462. Absent § 1367, *Jinks* explained, courts hearing supplemental state law claims would face a choice between the "obviously inefficient" options of retaining jurisdiction over a state-law claim "more appropriately ... heard in state court" or dismissing the state-law claim but allowing "the plaintiff to reopen the federal case if the

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[6] In *Stewart*, Congress had enacted a statute that provided that the applicable limitations periods in civil and criminal cases would be tolled for the period during which the actions could not be prosecuted because of the Civil War. *Stewart*, 78 U.S. at 494, 504-05. The claim in *Stewart* was a state-law breach of contract in Louisiana state court. This Court held that the statute applied to actions brought in state courts and then held that the tolling provision was within Congress's war powers under the Constitution. *See id.* at 506-07.

state court later held the claim to be time barred." *Id.* at 463. Justice Scalia concluded that "[b]y providing a straightforward tolling rule in place of this regime, § 1367(d) unquestionably promotes fair and efficient operation of the federal courts and is therefore conducive to the administration of justice." *Id.*

In light of these holdings, the lower court was simply incorrect to conclude that giving § 1367 its plain meaning would be an improper incursion into state sovereignty. For one thing, § 1367 is so "straightforward," *id.*, that it would overcome any "presumption against preemption." Reliance on the presumption is misguided as well because the grace-period approach *also* involves the displacement of state law; it extends the state limitations period by 30 days where it otherwise would have expired. Thus, adopting a "presumption against preemption" makes little sense: given that both parties agree that § 1367(d) "contemplated the pre-emption" of state statutes of limitations, the Court should not adopt the "starting presumption that Congress does not intend to supplant state law." *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 946 (2016) (quotation mark omitted). And any federalism interest in making the federal tolling period somewhat longer or shorter does not justify deviating from the statute's plain text.

But the more fundamental point is that the statute does not disrupt the "usual constitutional balance between the States and the Federal Government." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (quoting *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 242 (1985)). Any presumption against preemption does not apply in areas "where there has been a history

of significant federal presence," and statutes tolling state limitations periods go back at least 150 years. *United States v. Locke*, 529 U.S. 89, 108 (2000). The Constitution charges Congress with the administration of the lower federal courts, and Congress is entitled to determine tolling rules and other matters of procedure in an effort to make those courts more efficient. While states are free to give litigants more time to bring claims, Congress is likewise free to make the determination that tolling will allow the lower federal courts to achieve a more "fair and efficient operation" by encouraging litigants to bring all their related state-law claims in a single federal action. *Jinks*, 538 U.S. at 463. Accordingly, Congress has ample constitutional authority to adopt a tolling rule for supplemental jurisdiction claims, and this Court should enforce rather than frustrate the rule that Congress chose.

CONCLUSION

The judgment below should be reversed and remanded.

Respectfully submitted,

DAVID A. STRAUSS
SARAH M. KONSKY
JENNER & BLOCK
SUPREME COURT AND
APPELLATE CLINIC AT
THE UNIVERSITY OF
CHICAGO LAW SCHOOL
1111 E. 60th Street
Chicago, IL 60637

MATTHEW S. HELLMAN
ADAM G. UNIKOWSKY
Counsel of Record
TASSITY S. JOHNSON*
JENNER & BLOCK LLP
1099 New York Ave., NW
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

DONALD M. TEMPLE
TEMPLE LAW OFFICES
1310 L Street, NW
Suite 750
Washington, DC 20005

**Not admitted in D.C. Only admitted in Connecticut.*

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